In the High Court of Punjab and Haryana, Chandigarh

F.A.O. No. 642 of 1987

Date of Decision: September 20, 2006

Mukhtiar Singh and others

…Appellants

Versus

Dev Raj and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

PRESENT: None for the Appellants.

Mr. Munishwar Puri, Advocate,
for respondent No. 3.

JUDGMENT

M.M. KUMAR, J.

This is an appeal filed by the claimant-appellants under Section 110-D of the Motor Vehicles Act, 1939 (for brevity, 'the Act') challenging award dated 7.2.1987 passed by the Motor Accident Claims Tribunal, Patiala (for brevity, 'the Tribunal'), awarding an amount of Rs. 45,000/- as compensation. The claimant-appellants are the parents of the deceased Paramjit Singh, who had died in accident. There are categorical findings that the accident in question took place on account of negligence of the driver of the offending truck, which resulted into the death of Paramjit Singh, the son of the claimant-appellants. It has further been found that the income of the deceased was not less than Rs. 750/- per month and by applying the principle of 1/3rd deduction as well as his marriage

prospects, the annual dependency has been assessed at Rs. 3,000/-. The age of the deceased has been found to be 27 years and that of his father and mother as 55 and 50 years respectively. It has further been held that he was expected to maintain his parents for at least 15 years from his income and accordingly a multiplier of 15 has been applied.

Mr. Munishwar Puri, learned counsel for respondent No. 3 Insurance Company has made two submissions before me. Firstly he has argued that the age of the claimant-appellants was required to be kept in view by the Tribunal along with the age of the deceased. According to the learned counsel, Schedule II appended to the Motor Vehicles Act, 1988 should be applied by taking the age of the parents as the base. In other words, the argument is that the age of the parents would seek the guidance for deciding the multiplier to be applied in the present case. In support of his submission, learned counsel has placed reliance on para 18 of the judgment of Hon'ble the Supreme Court in the case of **U.P. State Road Transport Corporation v. Trilok Chandra, 1996 (2) PLR 537**. He has also relied upon para 13 of another judgment of Hon'ble the Supreme Court in the case of **New India Assurance Co. Ltd. v. Charlie, 2005 (2) PLR 661**. Learned counsel has also referred to a Division Bench judgment of this Court in the case of **Ram Murti and others v. Tarlochan Singh and others, 1992 ACJ 341**, where the award of Rs. 25,000/- was upheld and the claimant were parents, brother and sister. According to the learned counsel the deceased in the aforementioned case was 25 years of age and was found to be earning Rs. 800 per month. His second submission is that the liability of respondent No.

3 Insurance Company is limited to Rs. 50,000/- and in that regard he has drawn my attention to the policy Ex. R-1.

Having heard the learned counsel I am of the view that the instant appeal deserves to be partially accepted. The claimant-appellants who are parents and have been found to be dependent on their son who was killed in the accident, are aged 55 and 50 years. The income of the deceased has been presumed to be Rs. 750/- per month, which is on the lower side. It has come in the statement of the claimant-appellants that the deceased was running a workshop at Khanna and was earning Rs. 2,000/- per month. Even out of Rs. 750/-, the dependency has been assessed to be Rs. 250/- per month and the total dependency per annum has been assessed to be Rs. 3,000/-. The factor which have weigh with the Tribunal, namely, that the deceased was likely to be married and he was likely to spare less amount for his parents after marriage. The Tribunal has completely forgotten that even if the income was assessed at Rs. 750/- per month then it would not have remained static and there were reasonable future prospects, which would have resulted in enhancement of the income of the deceased. There is adequate authority for the aforementioned proposition to hike the prospective income as is evident from the perusal of judgments of Hon'ble the Supreme court in the cases of **General Manager Kerala State Road Transport Corporation v. Susamma Thomas, (1994) 2 SCC 176** and **Sarla Dixit v. Balwant Yadav, (1996) 3 SCC 179**. The Tribunal did not have any opportunity to place reliance on Schedule II appended to the Motor Vehicles Act, 1988 (1988 Act) for working out the multiplier.

A perusal of Schedule II appended with the 1988 Act shows that in cases where the deceased is more than 25 and less than 30 years of age then a multiplier of 18 should be applied. It has now been held by Hon'ble the Supreme Court in the case reported as **Kushnawa Begam v. New India Assurance Company Limited, (2001) 2 SCC 9**, that although Schedule II has been appended with the 1988 Act but it is a safe guide even in respect of cases arising under the 1939 Act. Therefore, the multiplier of 18 would be a proper multiplier, especially when the factor like future prospects is kept in view. Accordingly, the appeal deserves to be partially allowed and the award amount is liable to be enhanced to Rs. 54,000/-.

The arguments of the learned counsel for respondent No. 3-Insurance Company that the age of the claimant-appellants must be kept in view, has no leg to stand because the Tribunal in para 12 of the award has specifically observed that the age of Mukhtiar Singh was 55 years and that of his wife was 50 years. By keeping in view the average span of age in this part of the country, the Tribunal found that the deceased was expected to maintain his parents for at least 15 years. Therefore, it cannot be said on facts that the age of the appellants has not been kept in view.

The Division Bench judgment of this Court in the case of Ram Murti (supra) on which reliance has been placed, does not advance the case of respondent No. 3 Insurance company because in that case the accident had taken place on 9.5.1980 whereas in the present case the accident had occurred on 7.10.1985. Moreover, in the aforementioned judgment the father was found to be self-

sufficient and not dependent on the deceased and the dependency of the mother was only taken into account. Therefore, the instant case is entirely different on facts and it has no parallel with the judgment of the Division Bench in Ram Murti's case.

The other contention that the liability of respondent No. 3 Insurance Company is limited to Rs. 50,000/- also deserves to be out-rightly rejected as the schedule of the insurance cover clearly shows that amount which is necessary to meet the requirement of Motor Vehicles Act, 1939, is limited to Rs. 1,50,000/-. The aforementioned entry reads as under:-

"Limits of Liability:	
Limit of the amount of the Company's liability under Section II-I(i) in respect of any one accident.	Such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939
Limit of the amount of the company's liability under Section II-II(ii) in respect of any one claim or series of claims arising out of one event	Rs. 1,50,000/-"

In view of the above, the appeal is partly allowed. The multiplier of 18 is applied and the award is enhanced to Rs. 54,000/-. The amount shall be paid by respondent No. 3 Insurance Company along with interest @ 12% per annum from the date of application i.e. 25.3.1986 till the date of recovery thereof.

(M.M. KUMAR)
JUDGE

September 20, 2006

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